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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 235

WEST COAST MEAT COMPANY, *Petitioner*

v.

RECONSTRUCTION FINANCE CORPORATION

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Emergency Court of Appeals (R. 19-24) is not yet reported.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on June 30, 1952 (R. 25). The jurisdiction of this court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 31, 50 U.S.C. App. 924(d)), and 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the provision in a World War II meat subsidy regulation limiting the special non-processing slaughterers' subsidy, payable after November 1, 1943, to businesses which had been engaged as such non-processing slaughterers during a base period prior to October 1, 1943, is valid.

2. Whether, as a matter of interpretation, this regulation did limit the special non-processing slaughterers' subsidy to businesses which had been so engaged during the base period.[1]

REGULATION INVOLVED

Pursuant to a directive of the Office of Economic Stabilization (8 F.R. 14641), Defense Supplies Corporation[2] amended its Regulation 3 (8 F.R. 10826)[3] to provide an additional subsidy for cattle slaughtered by non-processing slaughterers. This amendment (Amendment 2) (9 F.R. 1820, 32 C.F.R. (1944 Supp.) 7003.14) added a new section, which in pertinent part is as follows:

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[1] The petition poses five questions for consideration. We believe that a determination of the two questions stated above will be dispositive of petitioner's contentions.

[2] Defense Supplies Corporation was dissolved on July 1, 1945, and its functions transferred to the respondent, Reconstruction Finance Corporation, by the Act of June 30, 1945, 59 Stat. 310. Regulation No. 3, as amended, was taken over and administered directly by R.F.C. (10 F.R. 11155).

[3] Regulation No. 3, as amended, was carried forward into Revised Regulation No. 3, issued by Defense Supplies Corporation, effective January 19, 1945. (10 F.R. 4241).

§ 7003.14 *Extra compensation for non-processing slaughterers of beef—(a) Definitions.* (1) "Non-processing slaughterer of beef" means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dress carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

Amendment 5 (10 F.R. 8074, 32 C.F.R. (1945 Supp.) 7003.1(s)), issued in compliance with Office of Economic Stabilization Directive No. 56 (10 F.R. 7117), enlarged the base period requirement to include:

> [unaffiliated slaughterers] who, during six consecutive months between January 1, 1941, and October 1, 1943, sold, and who currently sells, 98% or more, measured in dress carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments in the form of carcasses, wholesale cuts, boneless beef, or ground beef.

Amendment 7 (10 F.R. 11155, 32 C.F.R. (1945 Supp.) 7003.1(s)), issued in compliance with Amendment 1 to Directive 56 of the Office of Economic Stabilization (10 F.R. 8476), provides that:

> [unaffiliated slaughterers] who during six consecutive months, or during such other representative period as may be determined by the Director of Economic Stabilization, within the period between January 1, 1941, and October 1, 1943, sold, and who currently sells, 98% or more, measured in dress carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments in the form of carcasses, wholesale cuts, boneless beef, or ground beef.

STATEMENT

This case arises out of the denial of petitioner's claim as a non-processing beef slaughterer to extra compensation subsidies as provided by Amendment 2 of Regulation No. 3, *supra,* pp. 2-3, of the Defense Supplies Corporation.

The West Coast Meat Company is a corporation which was chartered on July 30, 1943, by the State of California for the purpose of engaging in the slaughtering business. In August 1943, petitioner purchased an abattoir which had been standing idle since 1939 (R. 9). Inspections were made by the Departments of Agriculture of the United States and the State of California, and after necessary repairs and improvements were effected, state and federal slaughtering licenses were issued and slaughtering operations commenced on November 8, 1943 (R. 3-4).

Prior to November 1, 1943—and during the time petitioner was preparing to operate—a Defense Supplies Corporation regulation (Regulation No. 3) provided for payment of a basic meat subsidy to cattle slaughterers. In compliance with a directive of the Office of Economic Stabilization, issued October 25, 1943, Defense Supplies Corporation amended its subsidy regulation so as to provide, in addition to this basic meat subsidy, a special subsidy to be paid to the non-processing slaughterers of the slaughtering industry. As a condition to eligibility for this additional compensation, the regulation required that the non-processing slaughterer have been engaged as a non-processing slaughterer of beef for six consecutive months of 1942 (*supra,* p. 3). For failure to meet this qualification, the petitioner's application for additional compensation was denied in April, 1944 (R. 11-12).

A formal protest was filed on December 13, 1950, in which it was alleged that the claim to the additional subsidy was payable under the provisions of Regulation No. 3, as amended, and that, to the extent that the regulation and directives required a contrary finding, they were "illegally discriminatory" against the petitioner and others similarly situated (R. 1). The protest was denied November 5, 1951, for the reason that the petitioner did not have the qualifying base period history, and since it was unable to establish its eligibility for

the extra compensation Reconstruction Finance Corporation could not legally pay the claim (R. 5-7).

A complaint was duly filed with the Emergency Court of Appeals in which petitioner reasserted the contentions previously stated in the protest (R. 12-15).[4] The court found that the base period requirement of the subsidy regulation was clear and unambiguous and, as determined by respondent, that the petitioner did not meet the eligibility requirements of the subsidy regulation. Considering the attack upon respondent's denial of the protest as a challenge to the validity of the controlling regulation, the court concluded that a rational basis existed for the base period requirement, and accordingly dismissed the complaint.

ARGUMENT

This case raises primarily the question of the validity of a provision of a meat subsidy regulation of World War II, which by its terms clearly excludes the petitioner.[5] A final resolution of the

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[4] Petitioner does not challenge the amount of the basic subsidy paid to it (R. 12-15).

[5] The words of the regulation are so clear (*supra*, pp. 2-4) that we need not stop to elaborate an answer to petitioner's subordinate contention that the regulation did not prohibit the award to it of the special non-processing slaughterers' subsidy. As the Emergency Court of Appeals said: "What complainant [petitioner] is asking us to do is not to interpret the language of the regulation, but to insert a qualification therein that the base period requirement shall be applicable only if an applicant was in the slaughtering business during the base period" (R. 22).

question by this Court can serve little future purpose inasmuch as the possibility of similar litigation is at best doubtful because of the December 15, 1950, deadline for protesting denials of World War II subsidy claims. R.F.C. Reg. 11, 15 F.R. 6193. The petition points to no regulation under the Defense Production Act of 1950, Ch. 932, 64 Stat. 798, 50 U.S.C. App. (Supp. V) 2061 *et seq.*, which might give rise to a like question. The decision of the court below is clearly correct, presents no conflict, and does not call for review by this Court.

1. At the time petitioner was incorporated and when it purchased the idle facilities which it later used, there was no provision for paying an additional subsidy to non-processors; nor had petitioner commenced operations when the additional subsidy became effective on November 1, 1943. *Supra*, p. 4. Under such circumstances it is difficult to see how there could have been "premeditated discrimination" (Pet. 11) either in the regulation or in the directive of the Office of Economic Stabilization which gave rise to it. On the contrary, the policy was that that segment of the slaughtering industry which had traditionally and historically been engaged in non-processing operations be protected, and at the same time the aim was not to encourage processing slaughterers to abandon their processing operations or to encourage newcomers to enter the field in order to avail themselves of the special

subsidy. This, we submit, constitutes a rational basis for confining the subsidy to those slaughterers who had been engaged in non-processing operations prior to November 1, 1943, the effective date of payment of the additional subsidy. *Earl C. Gibbs, Inc.* v. *Defense Supplies Corporation,* 155 F. 2d 525 (Em. Ct. App.), certiorari denied, 329 U.S. 737.[6]

We do not know whether the Office of Economic Stabilization and Reconstruction Finance Corporation would have been justified in extending the additional subsidy to those who entered the non-processing field, or who converted to non-processing operations, after October 31, 1943.[7] But the issue here is not whether the administrative officials would have been warranted in extending the special subsidy, but, rather, whether they were compelled to do so. That there was no such requirement is plain from the rational and adequate distinction between those slaughterers who had historically been non-processors and those who en-

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[6] See the administrator's statement quoted in *Ben H. Rosenthal & Co.* v. *Porter,* 158 F. 2d 171, 175-176 (Em. Ct. App.), petition for a writ of certiorari dismissed on petitioner's motion, 330 U.S. 802 (see op. below, R. 23). As to the validity of the so-called "grandfather clause", see *Oswald & Hess Co.* v. *Bowles,* 148 F. 2d 543, 545 (Em. Ct. App.), certiorari denied, 325 U.S. 871.

[7] The base period, which was initially limited to six months during 1942, was ultimately extended to include the period between January 1, 1941, and October 1, 1943. See Amendments 5 and 7, *supra,* pp. 3-4.

tered the business in the midst of the war. It is significant, on the issue of arbitrariness, that petitioner operated at a profit, however small (R. 2), but, at any rate, it was within the discretionary power of the appropriate administrative authorities, rather than the courts at this late date, to determine whether the line should be drawn as it was. *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337 (Em. Ct. App.); *Flett* v. *Bowles,* 142 F. 2d 559 (Em. Ct. App.).

Controlling regulations promulgated by the Reconstruction Finance Corporation were at all times issued in compliance with the directives of the Office of Economic Stabilization (*supra,* pp. 2-3), which, by Executive Order 9250 (7 F.R. 7871), was given overriding authority "to issue directives on policy" to the various federal agencies concerned with the price control program and the related subsidy programs. The petitioner at all times received the basic meat subsidy paid to all slaughterers. It now in effect asks the Court to broaden the segment of non-processing slaughterers eligible for the additional subsidy and thereby materially alter the subsidy program as formulated by those authorities whose responsibility it was and whose peculiar knowledge of the over-all economic situation qualified them to do so. We submit that this is not the function of the Emergency Court of Appeals. See *Flour Mills of America* v. *Reconstruction Finance Corporation,* 179 F. 2d 965 (Em. Ct. App.); *Flett* v. *Bowles, supra; Danz* v. *Reconstruction Finance Corporation,* 193 F. 2d 1010 (Em. Ct.

App.); *Hillcrest Terrace Corp.* v. *Brown*, 137 F. 2d 663, 668 (Em. Ct. App.); *Evergreen Meat Company* v. *Reconstruction Finance Corporation*, 188 F. 2d 368 (Em. Ct. App.).

2. Even if there were more merit to petitioner's claim of harsh treatment, the decision below would be correct. The mere fact that an individual slaughterer fails to qualify for the special subsidy does not render the regulation invalid. As was said in *Earl C. Gibbs, Inc.* v. *Defense Supplies Corporation*, 155 F. 2d 525, 532 (Em. Ct. App.), certiorari denied, 329 U.S. 737, "considerations of administrative workability may render it impracticable to provide complete individualization of treatment." Cf. *Ben H. Rosenthal & Co.* v. *Porter*, 158 F. 2d 171 (Em. Ct. App.), petition for certiorari dismissed on petitioner's motion, 330 U.S. 802. From a practical viewpoint it seems obvious that the administration of the subsidy program required a definition of the class of slaughterers eligible for the additional compensation; whatever the definition might have been, it was to be anticipated that borderline cases would inevitably arise, but this is hardly a ground for declaring a regulation arbitrary or capricious or enough to empower a court to administer relief on an *ad hoc* basis. *Counselman* v. *Fleming*, 161 F. 2d 203 (Em. Ct. App.), certiorari denied, 331 U.S. 861. Viewed in its entirety and in its war-time setting, the meat subsidy program, taken together with the meat ceiling price program, was generally fair and

equitable. The validity of the governing regulation must be seen as depending not upon its effect on a particular individual, but on the industry as a whole. *Bowles* v. *Willingham,* 321 U.S. 503, 516-519; *Seminole Rock & Sand Co.* v. *Fleming,* 160 F. 2d 542, 547 (Em. Ct. App.); *Van Der Loo* v. *Porter,* 160 F. 2d 110 (Em. Ct. App.), certiorari denied, 329 U.S. 774.

3. Petitioner's contention that the denial of its subsidy claim violates the due process clause of the Fifth Amendment also overlooks the fact that Section 2(e) of the Emergency Price Control Act, 50 U.S.C. App. 902(e), in authorizing subsidy programs, was never intended to create any contractual or vested rights in potential beneficiaries of subsidy programs. Section 2(e) merely sets forth a policy to be pursued in effecting the purposes of price control legislation; it confers no contractual rights. Cf. *Dodge* v. *Board of Education,* 302 U.S. 74. The Emergency Court of Appeals has ruled that meat subsidies are not absolute gratuities or bounties. *Illinois Packing Co.* v. *Snyder, supra; Earl C. Gibbs* v. *Defense Supplies Corporation, supra.* But it has never ruled that a claim for subsidy payment may be denominated a contract or property right, nor would such a holding be consistent with this Court's previous rejection of attempts to fashion contractual rights from declarations of legislative policy. See *Dodge* v. *Board of Education, supra; Cummings* v. *Deutsche Bank,* 300 U.S. 115, 122-124;

Maricopa County v. *Valley Bank*, 318 U.S. 357, 362; *United States* v. *Teller*, 107 U.S. 64, 68; *Frisbie* v. *United States*, 157 U.S. 160, 166.

4. Because the court below hypothetically referred to what it would consider an arbitrary and capricious proviso of a subsidy regulation, *i.e.*, one excluding from participation Democrats or Republicans or red-heads, petitioner apparently infers that the court considered its reviewing power to be limited thus narrowly and concludes that this amounts to "an abdication of the power entrusted to the court by Congress" (Pet. 12). Neither the inference nor the conclusion finds any justification either in the present decision or in past decisions of the Emergency Court of Appeals. Where the subsidy-paying agency has denied a justifiable claim by reason of an erroneous interpretation or application of its regulations, the court has not hesitated to correct the wrong. See *Maloney Packing Co.* v. *Reconstruction Finance Corp.*, 159 F. 2d 717 (Em. Ct. App.); *Belle City Packing Co.* v. *Reconstruction Finance Corp.*, 169 F. 2d 413 (Em. Ct. App.); *Earl C. Gibbs, Inc.* v. *Reconstruction Finance Corp.*, 169 F. 2d 654 (Em. Ct. App.); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corp.*, 169 F. 2d 658 (Em. Ct. App.); *Royal Packing Co.* v. *Reconstruction Finance Corp.*, 169 F. 2d 999 (Em. Ct. App.); *Consolidated Flour Mills Co.* v. *Reconstruction Finance Corp.*, 177 F. 2d 206 (Em. Ct. App.).

CONCLUSION

The order denying petitioner's protest was fully authorized by the clear and unambiguous provisions of the controlling regulation, which is in all respects valid. The decision below is clearly correct; we submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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